

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	14
NO:	0

MR. SPEAKER:

Your Committee on Financial Institutions, to which was referred Senate Bill 222, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Page 2, between lines 19 and 20, begin a new paragraph and insert:
- 2 "SECTION 2. IC 24-4.5-1-102, AS AMENDED BY P.L.258-2003,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 102. Purposes; Rules of
- 5 Construction—(1) This article shall be liberally construed and applied to
- 6 promote its underlying purposes and policies.
- 7 (2) The underlying purposes and policies of this article are:
- 8 (a) to simplify, clarify, and modernize the law governing retail
- 9 installment sales, consumer credit, small loans, and usury;
- 10 (b) to provide rate ceilings to assure an adequate supply of credit
- 11 to consumers;
- 12 (c) to further consumer understanding of the terms of credit
- 13 transactions and to foster competition among suppliers of
- 14 consumer credit so that consumers may obtain credit at
- 15 reasonable cost;
- 16 (d) to protect consumer buyers, lessees, and borrowers against

unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
 (e) to permit and encourage the development of fair and economically sound consumer credit practices;
 (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
 (g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, ~~2002~~ 2003.

SECTION 3. IC 28-1-11-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.2. (a) As used in this section, "rights and privileges" means the power:

(1) to:

~~(1)~~ (A) create;

~~(2)~~ (B) deliver;

~~(3)~~ (C) acquire; or

~~(4)~~ (D) sell;

a product, a service, or an investment that is available to or offered by; or

(2) to engage in other activities authorized for;

national banks domiciled in Indiana.

(b) A bank that intends to exercise any rights and privileges that are:

(1) granted to national banks; but

(2) not authorized for banks under the Indiana Code (except for this section) or any rule adopted under the Indiana Code;

shall submit a letter to the department describing in detail the requested rights and privileges granted to national banks that the bank intends to exercise. If available, copies of relevant federal law, regulations, and interpretive letters must be attached to the letter submitted by the bank.

(c) The department shall promptly notify the requesting bank of the department's receipt of the letter submitted under subsection (b). Except as provided in subsection (e), the bank may exercise the requested rights and privileges sixty (60) days after the date on which

1 the department receives the letter unless otherwise notified by the
2 department.

3 (d) The department, through its members, may prohibit the bank
4 from exercising the requested rights and privileges only if the members
5 find that:

6 (1) national banks domiciled in Indiana do not possess the
7 requested rights and privileges; or

8 (2) the exercise of the requested rights and privileges by the bank
9 would adversely affect the safety and soundness of the bank.

10 (e) The sixty (60) day period referred to in subsection (c) may be
11 extended by the department based on a determination that the bank's
12 letter raised issues requiring additional information or additional time for
13 analysis. If the sixty (60) day period is extended under this subsection,
14 the bank may exercise the requested rights and privileges only if the
15 bank receives prior written approval from the department. However:

16 (1) the members must:

17 (A) approve or deny the requested rights and privileges; or

18 (B) convene a hearing;

19 not later than sixty (60) days after the department receives the
20 bank's letter; and

21 (2) if a hearing is convened, the members must approve or deny
22 the requested rights and privileges not later than sixty (60) days
23 after the hearing is concluded.

24 (f) The exercise of rights and privileges by a bank in compliance
25 with and in the manner authorized by this section is not a violation of
26 any provision of the Indiana Code or rules adopted under IC 4-22-2.

27 (g) Whenever, in compliance with this section, a bank exercises
28 rights and privileges granted to national banks domiciled in Indiana, all
29 banks may exercise the same rights and privileges if the department by
30 order determines that the exercise of the rights and privileges by all
31 banks would not adversely affect their safety and soundness.

32 (h) If the department denies the request of a bank under this section
33 to exercise any rights and privileges that are granted to national banks,
34 the bank may appeal the decision of the department to the circuit court
35 with jurisdiction in the county in which the principal office of the bank
36 is located. In an appeal under this section, the court shall determine the
37 matter de novo."

Page 2, line 26, after "company," insert **"a subsidiary of a savings bank, a subsidiary of a savings association,"**.

Page 5, after line 4, begin a new paragraph and insert:

"SECTION 5. IC 28-7-1-9, AS AMENDED BY P.L.258-2003, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. A credit union has the following powers:

(1) To issue shares of its capital stock to its members. No commission or compensation shall be paid for securing members or for the sale of shares.

(2) To make loans to members or other credit unions. A loan to another credit union may not exceed twenty percent (20%) of the paid-in capital and surplus of the credit union making the loan.

(3) To make loans to officers, directors, or committee members, but only if:

(A) the loan complies with all requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(B) upon the making of the loan, the aggregate amount of loans outstanding under this subdivision will not exceed twenty percent (20%) of the unimpaired capital and surplus of the credit union;

(C) the loan is approved by the credit committee or loan officer; and

(D) the borrower takes no part in the consideration of or vote on the application.

(4) To invest in any of the following:

(A) Bonds, notes, or certificates that are the direct or indirect obligations of the United States, or of the state, or the direct obligations of a county, township, city, town, or other taxing district or municipality or instrumentality of Indiana and that are not in default.

(B) Bonds or debentures issued by the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) or the Home Owners' Loan Act (12 U.S.C. 1461 through 1468).

(C) Interest-bearing obligations of the FSLIC Resolution Fund and obligations of national mortgage associations issued under the authority of the National Housing Act.

- 1 (D) Mortgages on real estate situated in Indiana which are fully
2 insured under Title 2 of the National Housing Act (12 U.S.C.
3 1707 through 1715z).
- 4 (E) Obligations issued by farm credit banks and banks for
5 cooperatives under the Farm Credit Act of 1971 (12 U.S.C.
6 2001 through 2279aa-14).
- 7 (F) In savings and loan associations, other credit unions that
8 are insured under IC 28-7-1-31.5 and certificates of
9 indebtedness or investment of an industrial loan and investment
10 company if the association or company is federally insured.
11 Not more than twenty percent (20%) of the assets of a credit
12 union may be invested in the shares or certificates of an
13 association or company; nor more than forty percent (40%) in
14 all such associations and companies.
- 15 (G) Corporate credit unions.
- 16 (H) Federal funds or similar types of daily funds transactions
17 with other financial institutions.
- 18 (I) Mutual funds created and controlled by credit unions, credit
19 union associations, or their subsidiaries. Mutual funds referred
20 to in this clause may invest only in instruments that are
21 approved for credit union purchase under this chapter.
- 22 (J) Shares, stocks, or obligations of any credit union service
23 organization (as defined in Section 712 of the Rules and
24 Regulations of the National Credit Union Administration) with
25 the approval of the department. Not more than five percent
26 (5%) of the total paid in and unimpaired capital of the credit
27 union may be invested under this clause.
- 28 (5) To deposit its funds into:
- 29 (A) depository institutions that are federally insured; or
30 (B) state chartered credit unions that are privately insured by
31 an insurer approved by the department.
- 32 (6) To purchase, hold, own, or convey real estate as may be
33 conveyed to the credit union in satisfaction of debts previously
34 contracted or in exchange for real estate conveyed to the credit
35 union.
- 36 (7) To own, hold, or convey real estate as may be purchased by
37 the credit union upon judgment in its favor or decrees of

- 1 foreclosure upon mortgages.
- 2 (8) To issue shares of stock and upon the terms, conditions,
3 limitations, and restrictions and with the relative rights as may be
4 stated in the bylaws of the credit union, but no stock may have
5 preference or priority over the other to share in the assets of the
6 credit union upon liquidation or dissolution or for the payment of
7 dividends except as to the amount of the dividends and the time
8 for the payment of the dividends as provided in the bylaws.
- 9 (9) To charge the member's share account for the actual cost of
10 necessary locator service when the member has failed to keep the
11 credit union informed about the member's current address. The
12 charge shall be made only for amounts paid to a person or
13 concern normally engaged in providing such service, and shall be
14 made against the account or accounts of any one (1) member not
15 more than once in any twelve (12) month period.
- 16 (10) To transfer to an accounts payable, a dormant account, or a
17 special account share accounts which have been inactive, except
18 for dividend credits, for a period of two (2) years. The credit
19 union shall not consider the payment of dividends on the
20 transferred account.
- 21 (11) To invest in fixed assets with the funds of the credit union.
22 An investment in fixed assets in excess of five percent (5%) of its
23 assets is subject to the approval of the department.
- 24 (12) To establish branch offices, upon approval of the department,
25 provided that all books of account shall be maintained at the
26 principal office.
- 27 (13) To pay an interest refund on loans proportionate to the
28 interest paid during the dividend period by borrowers who are
29 members at the end of the dividend period.
- 30 (14) To purchase life savings and loan protection insurance for the
31 benefit of the credit union and its members, if:
- 32 (A) the coverage is placed with an insurance company licensed
33 to do business in Indiana; and
- 34 (B) no officer, director, or employee of the credit union
35 personally benefits, directly or indirectly, from the sale or
36 purchase of the coverage.
- 37 (15) To sell and cash negotiable checks, travelers checks, and

- 1 money orders for members.
- 2 (16) To purchase members' notes from any liquidating credit
3 union, with written approval from the department, at prices agreed
4 upon by the boards of directors of both the liquidating and the
5 purchasing credit unions. However, the aggregate of the unpaid
6 balances of all notes of liquidating credit unions purchased by any
7 one (1) credit union shall not exceed ten percent (10%) of its
8 unimpaired capital and surplus unless special written authorization
9 has been granted by the department.
- 10 (17) To exercise such incidental powers necessary or requisite to
11 enable it to carry on effectively the business for which it is
12 incorporated.
- 13 (18) To act as a custodian or trustee of any trust created or
14 organized in the United States and forming part of a stock bonus,
15 pension, or profit sharing plan which qualifies or qualified for
16 specific tax treatment under Section 408(a) or Section 401(d) of
17 the Internal Revenue Code, if the funds of the trust are invested
18 only in share accounts or insured certificates of the credit union.
- 19 (19) To issue shares of its capital stock or insured certificates to
20 a trustee or custodian of a pension plan, profit sharing plan, or
21 stock bonus plan which qualifies for specific tax treatment under
22 Sections 401(d) or 408(a) of the Internal Revenue Code.
- 23 (20) A credit union may exercise any rights and privileges that are:
24 (A) granted to federal credit unions; but
25 (B) not authorized for credit unions under the Indiana Code
26 (except for this section) or any rule adopted under the Indiana
27 Code;
- 28 if the credit union complies with section 9.2 of this chapter.
- 29 (21) To sell, pledge, or discount any of its assets. However, a
30 credit union may not pledge any of its assets as security for the
31 safekeeping and prompt payment of any money deposited, except
32 that a credit union may, for the safekeeping and prompt payment
33 of money deposited, give security as authorized by federal law.
- 34 (22) To purchase assets of another credit union and to assume the
35 liabilities of the selling credit union.
- 36 (23) To act as a fiscal agent of the United States and to receive
37 deposits from nonmember units of the federal, state, or county

governments, from political subdivisions, and from other credit unions upon which the credit union may pay varying interest rates at varying maturities subject to terms, rates, and conditions that are established by the board of directors. However, the total amount of public funds received from units of state and county governments and political subdivisions that a credit union may have on deposit may not exceed ~~ten~~ **twenty** percent ~~(10%)~~ **(20%)** of the total assets of that credit union, excluding those public funds.

(24) To join the National Credit Union Administration Central Liquidity Facility.

(25) To participate in community investment initiatives under the administration of organizations:

(A) exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(B) located or conducting activities in communities in which the credit union does business.

Participation may be in the form of either charitable contributions or participation loans. In either case, disbursement of funds through the administering organization is not required to be limited to members of the credit union. Total contributions or participation loans may not exceed one tenth of one percent (0.001) of total assets of the credit union. A recipient of a contribution or loan is not considered qualified for credit union membership. A contribution or participation loan made under this subdivision must be approved by the board of directors.

(26) To establish and operate an automated teller machine (ATM):

(A) at any location within Indiana; or

(B) as permitted by the laws of the state in which the automated teller machine is to be located.

(27) To demand and receive, for the faithful performance and discharge of services performed under the powers vested in the credit union by this article:

(A) reasonable compensation, or compensation as fixed by agreement of the parties;

(B) all advances necessarily paid out and expended in the discharge and performance of its duties; and

1 (C) unless otherwise agreed upon, interest at the legal rate on
2 the advances referred to in clause (B).

3 (28) Subject to any restrictions the department may impose, to
4 become the owner or lessor of personal property acquired upon
5 the request and for the use of a member and to incur additional
6 obligations as may be incident to becoming an owner or lessor of
7 such property.

8 SECTION 6. IC 28-7-1-9.2, AS ADDED BY P.L.134-2001,
9 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2004]: Sec. 9.2. (a) As used in this section, "rights and
11 privileges" means the power:

12 (1) to:

13 ~~(1)~~ (A) create;

14 ~~(2)~~ (B) deliver;

15 ~~(3)~~ (C) acquire; or

16 ~~(4)~~ (D) sell;

17 a product, a service, or an investment that is available to or
18 offered by; **or**

19 **(2) to engage in other activities authorized for;**

20 federal credit unions domiciled in Indiana.

21 (b) A credit union that intends to exercise any rights and privileges
22 that are:

23 (1) granted to federal credit unions; but

24 (2) not authorized for credit unions under the Indiana Code
25 (except for this section) or any rule adopted under the Indiana
26 Code;

27 shall submit a letter to the department describing in detail the requested
28 rights and privileges granted to federal credit unions that the credit
29 union intends to exercise. If available, copies of relevant federal law,
30 regulations, and interpretive letters must be attached to the letter
31 submitted by the credit union.

32 (c) The department shall promptly notify the requesting credit union
33 of the department's receipt of the letter submitted under subsection (b).
34 Except as provided in subsection (e), the credit union may exercise the
35 requested rights and privileges sixty (60) days after the date on which
36 the department receives the letter unless otherwise notified by the
37 department.

1 (d) The department, through its members, may prohibit the credit
2 union from exercising the requested rights and privileges only if the
3 members find that:

4 (1) federal credit unions domiciled in Indiana do not possess the
5 requested rights and privileges; or

6 (2) the exercise of the requested rights and privileges by the credit
7 union would adversely affect the safety and soundness of the
8 credit union.

9 (e) The sixty (60) day period referred to in subsection (c) may be
10 extended by the department based on a determination that the credit
11 union's letter raised issues requiring additional information or additional
12 time for analysis. If the sixty (60) day period is extended under this
13 subsection, the credit union may exercise the requested rights and
14 privileges only if the credit union receives prior written approval from
15 the department. However:

16 (1) the members must:

17 (A) approve or deny the requested rights and privileges; or

18 (B) convene a hearing;

19 not later than sixty (60) days after the department receives the
20 credit union's letter; and

21 (2) if a hearing is convened, the members must approve or deny
22 the requested rights and privileges not later than sixty (60) days
23 after the hearing is concluded.

24 (f) The exercise of rights and privileges by a credit union in
25 compliance with and in the manner authorized by this section is not a
26 violation of any provision of the Indiana Code or rules adopted under
27 IC 4-22-2.

28 (g) Whenever, in compliance with this section, a credit union
29 exercises rights and privileges granted to federal credit unions domiciled
30 in Indiana, all credit unions may exercise the same rights and privileges
31 if the department by order determines that the exercise of the rights and
32 privileges by all credit unions would not adversely affect their safety
33 and soundness.

34 (h) If the department denies the request of a credit union under this
35 section to exercise any rights and privileges that are granted to federal
36 credit unions, the credit union may appeal the decision of the
37 department to the circuit court with jurisdiction in the county in which

1 the principal office of the credit union is located. In an appeal under this
 2 section, the court shall determine the matter de novo.

3 SECTION 7. IC 28-8-4-27 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. (a) Except as
 5 provided in section 29 of this chapter, an application must be
 6 accompanied by a security device that secures the faithful performance
 7 of the obligations of the licensee to receive, handle, transmit, and pay
 8 money in connection with the:

9 (1) sale and issuance of payment instruments; or

10 (2) transmission of money.

11 (b) The security device required under subsection (a) must:

12 (1) be in an amount as provided under subsection (c);

13 (2) run to the state; and

14 (3) be in a form acceptable to the director.

15 (c) The security device must be in an amount calculated as follows:

16 STEP ONE: Subtract one (1) from the number of locations where
 17 the applicant proposes to engage in business under the license.

18 STEP TWO: Multiply the difference determined under STEP ONE
 19 by ten thousand dollars (\$10,000).

20 STEP THREE: Add ~~one two~~ hundred thousand dollars ~~(\$100,000)~~
 21 **(\$200,000)** to the product determined under STEP TWO.

22 STEP FOUR: Pay the amount that is the lesser of:

23 (1) the sum determined in STEP THREE; or

24 (2) ~~two three~~ hundred thousand dollars ~~(\$200,000)~~. **(\$300,000)**.

25 (d) If the security device filed is a bond, the aggregate liability of the
 26 surety shall not exceed the principal sum of the bond.

27 SECTION 8. IC 28-8-4-33 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 33. (a) A license granted
 29 under this chapter permits a licensee to conduct business:

30 (1) at one (1) or more locations directly or indirectly owned by the
 31 licensee; or

32 (2) through one (1) or more authorized delegates.

33 (b) Each licensee shall maintain a policy of insurance issued by an
 34 insurer authorized to do business in Indiana that insures the applicant
 35 against loss by a criminal act or act of dishonesty. The principal sum of
 36 the policy shall be equivalent to ~~one-half (1/2)~~ **the amount** of the
 37 required security device required under section 27 of this chapter or

1 deposit required under section 29 of this chapter.

2 (c) Except as provided in subsection (d), a licensee must at all times
3 possess permissible investments with an aggregate market value
4 calculated in accordance with generally accepted accounting principles
5 of not less than the aggregate face amount of all outstanding payment
6 instruments issued or sold by the licensee or an authorized delegate of
7 the licensee in the United States.

8 (d) The director may waive the permissible investments requirement
9 in subsection (c) if the dollar volume of a licensee's outstanding
10 payment instruments does not exceed:

11 (1) the security device posted by the licensee under section 27 of
12 this chapter; or

13 (2) the deposit made by the licensee under section 29 of this
14 chapter.

15 (e) A licensee that is a corporation must at all times be in good
16 standing with the secretary of state of the state in which the licensee
17 was incorporated.

18 SECTION 9. IC 28-10-1-1, AS AMENDED BY P.L.258-2003,
19 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JANUARY 1, 2004 (RETROACTIVE)]; Sec. 1. A reference to a federal
21 law or federal regulation in IC 28 is a reference to the law or regulation
22 in effect January 1, ~~2003~~ 2004.

23 SECTION 10. IC 28-11-3-6 IS ADDED TO THE INDIANA CODE
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
25 1, 2004]: Sec. 6. (a) As used in this section:

26 (1) "federally chartered" means an entity organized or
27 reorganized under the law of the United States; and

28 (2) "state chartered" means an entity organized or
29 reorganized under the law of Indiana or another state.

30 (b) If the department determines that federal law has
31 preempted a provision of IC 24, IC 26, IC 28, IC 29, or IC 30, the
32 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 applies to a state
33 chartered entity only to the same extent that the department
34 determines the provision is applicable to the:

35 (1) same; or

36 (2) functionally equivalent;

1 type of federally chartered entity.

2 (c) A state chartered entity seeking an exemption from a
3 provision of IC 24, IC 26, IC 28, IC 29, or IC 30 based on the
4 preemption of the provision as applied to a federally chartered
5 entity shall submit a letter to the department:

6 (1) describing in detail; and

7 (2) documenting the federal preemption of;

8 the provisions from which it seeks exemption. If available, copies
9 of relevant federal law, regulations, and interpretive letters must
10 be attached to the letter submitted by the requesting entity.

11 (d) The department shall notify the requesting entity within ten
12 (10) business days after the department's receipt of a letter
13 described in subsection (c). Except as provided in subsection (e),
14 upon receipt of the notification, the requesting entity may operate
15 as if it is exempt from the provision of IC 24, IC 26, IC 28, IC 29,
16 or IC 30 for ninety (90) days after the date on which the
17 department receives the letter, unless otherwise notified by the
18 department. This period may be extended if the department
19 determines that the requesting entity's letter raises issues
20 requiring additional information or additional time for analysis. If
21 the department extends the period, the requesting entity may
22 operate as if the requesting entity is exempt from a provision of
23 IC 24, IC 26, IC 28, IC 29, or IC 30 only if the requesting entity
24 receives prior written approval from the department. However:

25 (1) the department must:

26 (A) approve or deny the requested exemption; or

27 (B) convene a hearing;

28 not later than ninety (90) days after the department receives
29 the requesting entity's letter; and

30 (2) if a hearing is convened, the department must approve or
31 deny the requested exemption not later than ninety (90) days
32 after the hearing is concluded.

33 (e) The department may refuse to exempt a requesting entity
34 from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 if the
35 department finds that any of the following conditions apply:

(1) The department determines that a described provision of IC 24, IC 26, IC 28, IC 29, or IC 30 is not preempted for a federally chartered entity of the:

(A) same; or

(B) functionally equivalent;

type.

(2) The extension of the federal preemption in the form of an exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 to the requesting entity would:

(A) adversely affect the safety and soundness of the requesting entity; or

(B) result in an unacceptable curtailment of consumer protection provisions.

(3) The failure of the department to provide for the exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 will not result in a competitive disadvantage to the requesting entity.

(f) The operation of a financial institution in a manner consistent with exemption from a provision of IC 24, IC 26, IC 28, IC 29, or IC 30 under this section is not a violation of any provision of the Indiana Code or rules adopted under IC 4-22-2.

(g) If a financial institution is exempted from the provisions of IC 24, IC 26, IC 28, IC 29, or IC 30 in compliance with this section, the department shall do the following:

(1) Determine whether the exemption shall apply to all financial institutions that, in the opinion of the department, possess a charter that is:

(A) the same as; or

(B) functionally the equivalent of;
the charter of the exempt institution.

(2) For purposes of the determination required under subdivision (1), ensure that applying the exemption to the financial institutions described in subdivision (1) will not:

(A) adversely affect the safety and soundness of the financial institutions; or

1 **(B) unduly constrain Indiana consumer protection**
 2 **provisions.**

3 **(3) Issue an order published in the Indiana Register that**
 4 **specifies whether the exemption applies to the financial**
 5 **institutions described in subdivision (1).**

6 **(h) If the department denies the request of a financial**
 7 **institution under this section for exemption from Indiana Code**
 8 **provisions that are preempted for federally chartered institutions,**
 9 **the requesting institution may appeal the decision of the**
 10 **department to the circuit court of the county in which the**
 11 **principal office of the requesting institution is located.**

12 SECTION 11. IC 28-13-9-9 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Unless the articles
 14 of incorporation provide otherwise, if a vacancy occurs on a board of
 15 directors, including a vacancy resulting from an increase in the number
 16 of directors:

17 (1) the board of directors may fill the vacancy; or
 18 (2) if the directors remaining in office constitute fewer than a
 19 quorum of the board, the directors may fill the vacancy by the
 20 affirmative vote of a majority of all the directors remaining in
 21 office.

22 (b) If the vacant office was held by a director elected by a voting
 23 group of shareholders, only the holders of shares of that voting group
 24 are entitled to vote to fill the vacancy if it is filled by the shareholders.

25 (c) A vacancy that will occur at a specific later date by reason of a
 26 resignation effective at a later date under section 7(b) of this chapter or
 27 otherwise may be filled before the vacancy occurs. However, the new
 28 director may not take office until the vacancy occurs.

29 **(d) If:**

30 **(1) a vacancy occurs on a board of directors; and**
 31 **(2) the vacancy is not filled by a competent replacement**
 32 **through the institution's normal election process within a**
 33 **period considered reasonable by the department of financial**
 34 **institutions;**

35 **the director of the department may appoint to the board of**
 36 **directors a person whom the director considers capable of**

1 providing competent leadership and decision making ability.

2 (e) A person appointed under subsection (d):

- 3 (1) may serve until the director of the department
 4 determines that the institution has filled the vacancy
 5 through the institution's normal election process; and
 6 (2) may not serve on a board of directors for a period of more
 7 than two (2) years, unless elected through the institution's
 8 normal election process.

9 SECTION 12. IC 28-13-16-4, AS AMENDED BY P.L.258-2003,
 10 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2004]: Sec. 4. (a) A financial institution or any of its
 12 subsidiaries may acquire or establish a qualifying subsidiary by
 13 providing the department with written notice before acquiring or
 14 establishing the subsidiary. The department shall notify the requesting
 15 financial institution of the department's receipt of the notice.

16 (b) A subsidiary may exercise a power or engage in an activity
 17 permitted to be performed by a financial institution under the same
 18 conditions and restrictions as if the power or activity is performed by
 19 the financial institution itself, or the activity has been authorized by as
 20 "activity eligible for notice" procedures under 12 CFR
 21 ~~5.34(e)(2)(ii)~~ 5.34(e).

22 (c) The qualified subsidiary may exercise or engage in the activity
 23 thirty (30) days after the date on which the department receives the
 24 notification unless otherwise notified by the department.

25 SECTION 13. IC 28-13-16-5, AS ADDED BY P.L.215-1999,
 26 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2004]: Sec. 5. A financial institution may acquire or establish
 28 a nonqualifying subsidiary by submitting an application to the
 29 department containing:

- 30 (1) a complete description of the financial institution's investment
 31 in the subsidiary;
 32 (2) the activity to be conducted; and
 33 (3) a representation that the activity:
 34 (A) could be performed by a financial institution under
 35 statutory authority of this title;
 36 (B) is a part of or incidental to the business of banking as
 37 determined by the director; or

1 (C) has been authorized ~~by~~ as **"activity eligible for notice"**
 2 **procedures under 12 CFR ~~5.34(c)(2)(ii)~~ 5.34(e).**

3 The department shall notify the requesting financial institution of the
 4 department's receipt of the application.

5 SECTION 14. IC 28-15-2-2 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) As used in this
 7 section, "rights and privileges" means the power:

8 (1) to:

9 ~~(1)~~ (A) create;

10 ~~(2)~~ (B) deliver;

11 ~~(3)~~ (C) acquire; or

12 ~~(4)~~ (D) sell;

13 a ~~product or service product~~, a service, or an investment that
 14 is available to or offered by; or

15 (2) to engage in other activities authorized for;

16 federal savings associations **domiciled in Indiana.**

17 (b) Subject to this section, savings associations may exercise the
 18 rights and privileges that are granted to federal savings associations.

19 (c) A savings association that intends to exercise any rights and
 20 privileges that are:

21 (1) granted to federal savings associations; but

22 (2) not authorized for savings associations under:

23 (A) the Indiana Code (except for this section); or

24 (B) a rule adopted under IC 4-22-2;

25 shall submit a letter to the department, describing in detail the requested
 26 rights and privileges granted to federal savings associations that the
 27 savings association intends to exercise. If available, copies of relevant
 28 federal law, regulations, and interpretive letters must be attached to the
 29 letter.

30 (d) The department shall promptly notify the requesting savings
 31 association of its receipt of the letter submitted under subsection (c).
 32 Except as provided in subsection (f), the savings association may
 33 exercise the requested rights and privileges sixty (60) days after the date
 34 on which the department receives the letter unless otherwise notified by
 35 the department.

36 (e) The department, through its members, may prohibit the savings
 37 association from exercising the requested rights and privileges only if

1 the members find that:

2 (1) federal savings associations in Indiana do not possess the
3 requested rights and privileges; or

4 (2) the exercise of the requested rights and privileges by the
5 savings association would adversely affect the safety and
6 soundness of the savings association.

7 (f) The sixty (60) day period referred to in subsection (d) may be
8 extended by the department based on a determination that the savings
9 association letter raises issues requiring additional information or
10 additional time for analysis. If the sixty (60) day period is extended
11 under this subsection, the savings association may exercise the
12 requested rights and privileges only if the savings association receives
13 prior written approval from the department. However:

14 (1) the members must:

15 (A) approve or deny the requested rights and privileges; or

16 (B) convene a hearing;

17 not later than sixty (60) days after the department receives the
18 savings association's letter; and

19 (2) if a hearing is convened, the members must approve or deny
20 the requested rights and privileges not later than sixty (60) days
21 after the hearing is concluded.

22 (g) The exercise of rights and privileges by a savings association in
23 compliance with and in the manner authorized by this section does not
24 constitute a violation of any provision of the Indiana Code or rules
25 adopted under IC 4-22-2.

26 (h) Whenever, in compliance with this section, a savings association
27 exercises rights and privileges granted to national savings associations
28 domiciled in Indiana, all savings associations may exercise the same
29 rights and privileges if the department by order determines that the
30 exercise of the rights and privileges by all savings associations would
31 not adversely affect their safety and soundness.

32 SECTION 15. IC 32-17-9-6, AS ADDED BY P.L.2-2002, SECTION
33 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
34 2004]: Sec. 6. As used in this chapter, "security account" means:

35 (1) a reinvestment account associated with a security, a securities
36 account with a broker, a cash balance in a brokerage account,
37 cash, interest, earnings, or dividends earned or declared on a

1 security in an account, a reinvestment account, or a brokerage
 2 account, whether or not credited to the account before the
 3 owner's death; ~~or~~

4 **(2) an investment management or custody account with a**
 5 **trust company or a trust department of a bank with trust**
 6 **powers, including the securities in the account, a cash**
 7 **balance in the account, cash, cash equivalents, interest,**
 8 **earnings, or dividends earned or declared on a security in the**
 9 **account, whether or not credited to the account before the**
 10 **owner's death; or**

11 **(3) a cash balance or other property held for or due to the owner**
 12 **of a security as a replacement for or product of an account**
 13 **security, regardless of whether the cash was credited to the**
 14 **account before the owner's death.**

15 SECTION 16. IC 32-29-1-2.5 IS ADDED TO THE INDIANA
 16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2004]: **Sec. 2.5. A mortgagee or a mortgagee's assignee or**
 18 **representative may not require a mortgagor, as a condition of**
 19 **receiving or maintaining a mortgage, to obtain hazard insurance**
 20 **coverage against risks to improvements on the mortgaged**
 21 **property in an amount exceeding the replacement value of the**
 22 **improvements.**

23 SECTION 17. **An emergency is declared for this act."**

24 Renumber all SECTIONS consecutively.

(Reference is to SB 222 as printed January 21, 2004.)

and when so amended that said bill do pass.

Representative Bardon